

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21390 OF 2005

30.9.2005

Between:

1. K.Shamantha Reddy, W/o.Dr.K.Narsimha Reddy,
Himayathnagar, Hyderabad, Andhra Pradesh presently residing at
200, Raymond Road, Americus, Georgia-31719, U.S.A.
and another

... Petitioners

AND

1. The Commissioner, Municipal Corporation of Hyderabad,
Near Tank Bund, Hyderabad
And another

... Respondents

ORDER:

The petitioners claim to be owners of premises bearing No.3-6-199/1/A, Himayathnagar, Hyderabad. In connection with widening of road from Liberty junction to Narayanguda via Himayathnagar to a width of 100 feet as per Zonal development plan, the first respondent served a letter on the General Power of Attorney Holder of the petitioners, which reads as under.

You are aware that Municipal Corporation of Hyderabad has taken up Road widening from Liberty Junction to Narayanaguda via Himayatnagar to a width of 100 feet, as per Zonal development Plan.

You are aware that this is one of the important Road in Twin-cities and the existing width is not sufficient to accommodate day to day increased traffic volume.

You are aware that the Municipal Corporation of Hyderabad have issued a letter with a request to extend your co-operation in road widening and handing over the effected portion as per enclosed plan. Your property bearing No.3-6-199/1/A getting effected to a depth of 20'-1" feet and extent of 322.22 Sq.yards, as shown in the enclosed plan.

You are once again requested to extend your co-operation to the Municipal

Corporation of Hyderabad for widening the road and hand over the effected portion (copy enclosed) in the public interest and the MCH will extend benefits as per rules in force.

Aggrieved by the above communication, the Writ Petition is filed before this Court. A reading of the above communication would show that the Municipal Corporation of Hyderabad (MCH) sought consent of the owners for advance possession in larger public interest. It does not, however, mean that in the event of owner of the property is not willing to give consent the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act). In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extend all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

Learned Standing Counsel for MCH submits that if the petitioner owners are not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). Therefore, the Writ Petition is misconceived. If the petitioners are not given their consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property of the petitioner. In this case, the petitioners have allegedly not given their willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioners cannot be deprived of their right to enjoy the property.

The Writ Petition with the above observations is accordingly disposed of. No costs.

(V.V.S.RAO, J)

September 30, 2005.

NOTE:

Issue order copy by

03.10.2005.

(B/O)

YS